

In re TURNER ET AL., Application No. 09/784,787
Amendment A

REMARKS

The Office action dated September 8, 2004, and the references cited have been fully considered. In response, please enter the amendments presented herein and consider the following remarks. Reconsideration and/or further prosecution of the application is respectfully requested. No new matter is added herein.

Several amendments to the claims are presented herein mainly to conform to drafter current preferences. Claim 1 is amended to change "the particular said first element" to "itself" and "the collected information" to "its said collected information." Also, claims 3, 4 and 5 are amended to add the word "said." Claims 10 and 15 are amended to delete the word "further."

Additionally, claim 18 is amended to recite that some of the traffic information is non-flow control information, with support provided at least in FIG. 7D. Also, new claims 21 (depending from independent claim 18) and new claims 22-24 (in the claim tree of independent claim 1) are added to provide some dependent limitations that the information includes packet counts and/or statistical information, with support provided in the originally filed application at least on pages 6, 14 and 15.

In regards to the Office action, all claims stand rejected under 35 USC § 102(e) as being anticipated by Lenoski et al., US Patent 6,735,173.

For anticipation under 35 USC § 102, the reference must teach each and every aspect of the claimed invention either explicitly or impliedly. MPEP § 706.02. Inherent means it *must* occur. The fact that a certain result or characteristic *may* occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. MPEP § 2112 (*emphasis in original*). Moreover, the burden is on the Office to present a *prima facie* case of anticipation. Applicants respectfully traverse all claim rejections as the Office fails to present such a case. Additionally, the Office cites apparatus for rejecting method operation. The MPEP requires for a proper anticipation rejection, the reference must teach that the operation occurs, not merely that a configuration of such apparatus may cause something to occur.

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In terms of a possible § 103 obviousness issue, the present application (US Application No. 10/616,737) and the reference (Lenoski et al., US Patent 6,735,173) were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. Therefore, Applicants believe Lenoski et al. is not an appropriate prior art reference for use in a § 103 obviousness rejection.

Regarding claim 1, Applicants respectfully traverse the application of Lenoski et al. to claim 1. The first limitation of claim 1 defines that the information collected *represents* (i.e., to stand for, to symbolize) approximately a volume of traffic contained within itself (i.e., the particular first element). (*Emphasis added*). The Office action defines the information as "packets." The act of a switch element receiving packets fails to teach collecting information representing the volume of traffic contained within the switch element. Moreover, the second limitation's recitation of "a subset of the collected information," thus, based on the provided antecedent basis, refers to a *subset of the collection representing approximately the volume of traffic contained within itself* (i.e., the particular first element). (*Emphasis added*). Once again receiving packets neither teaches nor suggests these limitations. Moreover, new dependent claims 22-24 are added herein to define for the respective dependent claims, a further characterization of the information or subset thereof. (Note, claims 22-24 are believed to be allowable for at least the reasons presented herein in relation to claim 1 as well as for claim 13.)

Moreover, claim 1 recites "the second element manipulating the received indications *to determine a set of traffic conditions*." (*Emphasis added*). The Office cites Lenoski et al., col. 9, lines 61-62 ("SE-1300 generates, consumes, processes and reacts to flow control information as further described in detail hereinafter.") This fails to teach *determining a set of traffic conditions* as recited in claim 1.

For at least these reasons, Applicants respectfully submit that independent claim 1 and dependent claims 2-12 and 21-23 are not anticipated by Lenoski et al.

Additionally, in regards to the rejection of claim 3, the Office cites col. 10, line 13-15 for the requisite teaching. However, these lines describe control logic 341 and a flow control data

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structure stored in memory 342, which are part of SE-2 330. However, the Office has applied SE-1 of Lenoski et al. to be the first element introduced in claim 1, and not SE-2. In fact, the Office applies SE-2 of Lenoski as the second element of claim 1. However, dependent claim 3 requires that the first element (i.e., the Office's SE-1) maintain the data structure, while Lenoski et al., col. 10 lines 13-15 teach that this is performed by SE-2.

Moreover, claim 3 requires that "wherein said collecting information by each of the plurality of first elements of the packet switching system includes maintaining a data structure *indicating a traffic volume for each destination.*" (*Emphasis added.*) The Office fails to provide a rejection for the limitation of *a traffic volume*.

For at least these reasons, the Office further fails to present a *prima facie* case of anticipation for dependent claims 3-5.

Additionally, in regards to the rejection of claim 4, the limitation of "destination" acquires its antecedent basis in claim 3 for that maintained in the data structure. Thus, claim 4 further limits the data structure, and the Office fails to present such a *prima facie* case of anticipation for all recited limitations.

Additionally, in regards to the rejection of claim 5, which recites "wherein the set of traffic conditions includes a destination traffic condition for each said destination." The set of traffic conditions acquires its antecedent basis in claim 1's limitation of "the second element manipulating the received indications to determine a set of traffic conditions." Thus, the limitation of claim 5 further defines the determination performed by the second element. The Office cites Lenoski et al., col. 5, lines 41-48 ("...being in a congested or in a non-congested state. For example, if the component perceived the destination as being non-congested for only a short duration before receiving a congested indication for the destination, then the range of possible values for this random period may be increased so that the components of the packet switch may start sending packets to this destination over a longer period of time"), which fails to teach these further limitations. Thus, the Office fails to present such a *prima facie* case of anticipation for all recited limitations of dependent claims 5 and 6.

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Additionally, in regards to the rejection of claim 6, the limitation of "destination" acquires its antecedent basis in claim 3 for that maintained in the data structure. Thus, claim 6 further limits the data structure, and the Office fails to present such a *prima facie* case of anticipation for all recited limitations.

Additionally, in regards to the rejection of claim 7, which recites " wherein the set of traffic conditions includes a destination traffic indication *for each destination connected to the second element.*" (*Emphasis added.*) The set of traffic conditions acquires its antecedent basis in claim 1's limitation of "the second element manipulating the received indications to determine a set of traffic conditions." Thus, the limitation of claim 5 further defines the determination performed by the second element. The Office cites Lenoski et al., col. 5, lines 41-48 ("...being in a congested or in a non-congested state. For example, if the component perceived the destination as being non-congested for only a short duration before receiving a congested indication for the destination, then the range of possible values for this random period may be increased so that the components of the packet switch may start sending packets to this destination over a longer period of time"), which fails to teach these further limitations. Moreover, claim 7 recites *for each destination connected to the second element.* The Office uses Lenoski et al.'s SE-2 (which are shown as being connected to SE-3's) as the second element of the claim. Thus, the Office fails to present such a *prima facie* case of anticipation for all recited limitations of dependent claim 7.

Additionally, in regards to the rejection of claim 8, which recites "wherein a routing stage of the packet switching system includes each of the plurality of first elements." The Office equates the first elements with SE-1's of Lenoski et al., which as one skilled in the art would clearly understand are *distribution stage* switch elements, *not routing stage* switch elements. Thus, the Office fails to present such a *prima facie* case of anticipation for all recited limitations of dependent claim 8.

Additionally, in regards to the rejection of claim 9, SE-3's are the final stage switching elements, whether they are implemented in a folded or non-folded network. Such a folded

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network might have the first and third switching stage elements on a single chip and the second stage switching elements on another chip. Switching is still done in the order of SE-1, SE-2 then SE-3, thus SE-3 is the final switching stage. Thus, the Office fails to present such a *prima facie* case of anticipation for all recited limitations of dependent claim 9.

For at least these reasons, the Office failed to present a *prima facie* case of anticipation for independent claim 1 and its dependent claims 2-12 (and new claims 21-23), and claims 1-12 and 21-23 are believed to be allowable.

In regards to independent claim 13, first Applicants point out that one skilled in the art would clearly understand that there are three switching stages, not two. Next, the Office fails to present a *prima facie* case of anticipation as the Office relies on TABLEs 742 and 748 which store flow control information, such as that of data structure 700 shown in FIG. 7A, not quantities of packets as recited in claim 13. Lenoski et al., col. 14, lines 62-64, and col. 14, lines 44-60. For at least these reasons, claims 13-17 are believed to be allowable.

In regards to claim 18, amended claim 18 is amended as previously described herein to recite that some of the traffic information is non-flow control information, with support provided at least in FIG. 7D. Moreover, claim 21 is added to provide a dependent limitation that the non-flow control information includes packet counts. As shown in FIG. 7D, which is relied upon by the Office in rejecting claim 18, Lenoski et al. forwards flow control information (as opposed to the recited limitation of non-flow control information). For at least these reasons, independent claim 18 and its dependent claims of 19-21 are believed to be allowable.

Additionally, dependent claims 19-20 are believed to be allowable as Lenoski's SE-2 is not a final switching stage (as previously discussed herein), and thus does not teach the recited limitations. Moreover, dependent claim 21 is believed to be allowable for at least the reasons presented herein in relation to claim 1 as well as for claim 13.

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Final Remarks. In view of the above remarks and for at least the reasons presented herein, all pending claims are believed to be allowable over the prior art of record, the application is considered in good and proper form for allowance, and the Office is respectfully requested to issue a timely Notice of allowance in this case. If, in the opinion of the Office, a telephone conference would expedite the prosecution of the subject application, the Office is invited to call the undersigned attorney. Note, if the Office action complies with MPEP § 706 and specifically 37 CFR 1.104(c)(2), then Lenoski et al. is the best reference available. As this reference fails to teach all the claim elements and limitations as required by the MPEP, then all pending claims are believed to be allowable, and Applicants request the claims be allowed and the application pass to issuance.

Applicants believe no extension of time is required, but hereby petitions any such extension of time required and authorizes the Commissioner to charge any associated fees to Deposit Account No. 501430.

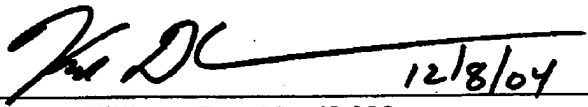
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Additionally, the Commissioner is hereby generally authorized under 37 C.F.R. § 1.136(a)(3) to treat this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 requiring an extension of time as incorporating a request therefore, and the Commissioner is hereby specifically authorized to charge Deposit Account No. 501430 for any fee that may be due in connection with such a request for an extension of time. Moreover, the Commissioner is hereby authorized to charge payment of any fee due any under 37 C.F.R. §§ 1.16 and § 1.17 associated with this communication or any future communication in this or any related application filed pursuant to 37 C.F.R. § 1.53 or credit any overpayment to Deposit Account No. 501430.

Respectfully submitted,
The Law Office of Kirk D. Williams

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By


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